

## **IC 33-2.1-4**

### **Chapter 4. Judicial Nominating Commission**

#### **IC 33-2.1-4-1**

##### **Nonattorney commissioners; appointment; term; residency**

Sec. 1. (a) The governor shall appoint three (3) nonattorney citizens of Indiana, one (1) each from the First District, the Second District, and the Third District of the court of appeals, as commissioners of the judicial nominating commission.

(b) One (1) month prior to the expiration of a term of office of a nonattorney commissioner, the governor shall either reappoint such commissioner as provided in section 5 of this chapter or appoint a new nonattorney commissioner. All appointments made by the governor to the judicial nominating commission shall be certified to the secretary of state and to the clerk of the supreme court within ten (10) days of the appointment.

(c) Except as provided in subsection (e), the governor shall appoint each nonattorney commissioner for a term of three (3) years.

(d) Each appointed nonattorney commissioner shall reside in the court of appeals district for which he was appointed. A nonattorney commissioner shall be considered as having resigned his position if he changes his residency from the court of appeals district for which he was appointed.

(e) Whenever a vacancy occurs in the office of a nonattorney commissioner, the chairman of the commission shall promptly notify the governor in writing of such fact. Vacancies in the office of nonattorney commissioners shall be filled by appointment of the governor within sixty (60) days after he has notice of such vacancy. The term of the nonattorney commissioner so appointed shall be for the unexpired term of the member whose vacancy he has filled.

*(Formerly: Acts 1971, P.L.427, SEC.5.) As amended by Acts 1978, P.L.137, SEC.3; P.L.184-1986, SEC.1.*

#### **IC 33-2.1-4-2**

##### **Attorney commissioners; electors and elections; residency; term; vacancy**

Sec. 2. (a) For purposes of electing members to the judicial nominating commission, the state shall be divided into three (3) districts, which shall correspond to the First District, the Second District, and the Third District of the court of appeals.

(b) The qualified electors consist of the individuals who are registered with the clerk of the supreme court as attorneys in good standing under the requirements of the supreme court.

(c) The electors of each district shall elect one (1) resident of their respective district, who is admitted to the practice of law in Indiana, to the judicial nominating commission. The term of office of each elected member shall be three (3) years, commencing on the first day of January following his election. During the month prior to the expiration of each elected member's term of office an election shall be held to fill the succeeding three (3) year term of office. Attorney commissioners

on the commission shall reside for the term of their office in the district from which they were elected. An attorney commissioner shall be considered as having resigned his position if he changes his residency from the court of appeals district for which he was elected.

(d) Except when a term of office has less than ninety (90) days remaining, vacancies in the office of an attorney commissioner to the judicial nominating commission shall be filled for the unexpired term of the member creating the vacancy by a special election. An attorney commissioner who is elected to fill an unexpired term shall commence his duties immediately upon the certification of his election to the secretary of state.

*(Formerly: Acts 1971, P.L.427, SEC.5.) As amended by Acts 1978, P.L.137, SEC.4; P.L.184-1986, SEC.2.*

### **IC 33-2.1-4-3**

#### **Election procedure**

Sec. 3. The attorney commissioners of the judicial nominating commission shall be elected by the following process:

(1) The clerk of the supreme court shall, at least ninety (90) days prior to the date of an election, send a notice by mail to the address for each qualified elector shown on the records of the clerk informing them that nominations for the election must be made to the clerk of the supreme court at least sixty (60) days prior to the election.

(2) A nomination in writing accompanied by a signed petition of thirty (30) electors from the nominee's district, and the written consent of the nominee shall be filed by any electors or group of electors admitted to the practice of law in Indiana who reside in the same district as the nominee, by mail or otherwise, in the office of the clerk of the supreme court at least sixty (60) days prior to the election.

(3) The clerk of the supreme court shall prepare and print separate ballots for each court of appeals district. These ballots shall contain the names and residence addresses of all nominees residing within the district for which the ballots are prepared, and whose written nominations, petitions, and written statements of consent have been received sixty (60) days prior to the election.

(4) The ballot must read as follows:

Indiana Judicial Nominating Commission

BALLOT FOR DISTRICT ( )

To be cast by individuals residing in District ( ) and registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court. Vote for one (1) member listed below for Indiana Judicial Nominating Commissioner for the term commencing \_\_\_\_\_.

District ( )

(Name) (Address)

(Name) (Address)

(Name) (Address)

To be counted, this ballot must be completed, the accompanying certificate completed and signed, and both together mailed or delivered

to the Clerk of the Supreme Court of Indiana, Indianapolis, Indiana, not later than \_\_\_\_\_.

**DESTROY BALLOT IF NOT USED**

(5) The nominee from a district receiving the most votes from the district shall be elected.

(6) The clerk shall also supply with each ballot distributed by him a certificate, to be completed and signed and returned by the elector voting such ballot, certifying that he is registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court, and that he voted the ballot returned. A ballot not accompanied by the signed certificate of the voter shall not be counted.

(7) To maintain the secrecy of each vote, a separate envelope shall be provided by the clerk for the ballot, in which only the voted ballot is to be placed. This envelope shall not be opened until the counting of the ballots.

(8) The clerk of the supreme court shall mail a ballot and its accompanying material to all electors at least two (2) weeks before the date of the election.

(9) The ballot and the accompanying certificate must be received by the clerk of the supreme court by 4 p.m. on the last day of the election period.

(10) Upon receiving the completed ballots and the accompanying certificate the clerk of the supreme court shall insure that the certificates have been completed in compliance with this article. All ballots that are accompanied by a valid certificate shall be placed in a package designated to contain ballots. All accompanying certificates shall be placed in a separate package.

(11) The clerk of the supreme court, with the assistance of the secretary of state, and the attorney general, shall open and canvass all ballots after 4 p.m. on the last day of the election period in the office of the clerk of the supreme court. No ballots received after 4 p.m. are to be counted unless the chief justice of the state orders an extension of time because of unusual circumstances. Upon canvassing the ballots the clerk of the supreme court shall place all ballots back in their packages. These, along with the certificates, shall be retained in the clerk's office for a period of six (6) months, and the clerk shall permit no one to inspect them except upon an order of the supreme court.

(12) Within ten (10) days after the election, the clerk shall certify the results to the secretary of state.

(13) In any election held for selection of attorney commissioners of the judicial nominating commission, in case two (2) or more nominees are tied, the canvassers shall resolve the tie by lot in such manner as they shall adopt and the winner of the lot shall be deemed to have been elected.

*(Formerly: Acts 1971, P.L.427, SEC.5.) As amended by P.L.184-1986, SEC.3.*

**IC 33-2.1-4-4**

**Notification**

Sec. 4. Notification. After the attorney commissioners have been elected, and after the names of the non-attorney commissioners appointed by the Governor have been certified to the Secretary of State as this article so provides, the Clerk shall by regular mail, notify the members of the Commission of their election or appointment.  
*(Formerly: Acts 1971, P.L.427, SEC.5.)*

#### **IC 33-2.1-4-5**

##### **Duration in office**

Sec. 5. A member of the judicial nominating commission may serve until his successor is appointed or elected. No attorney commissioner or nonattorney commissioner shall be eligible for successive reelection or reappointment, except that one who has been appointed or elected to fill a vacancy on the commission for less than one (1) year shall be eligible upon the expiration of that term, if otherwise qualified, for a succeeding term.  
*(Formerly: Acts 1971, P.L.427, SEC.5.) As amended by P.L.184-1986, SEC.4.*

#### **IC 33-2.1-4-6**

##### **Duties**

Sec. 6. When a vacancy occurs in the supreme court, the court of appeals, or the tax court, the clerk of the court shall promptly notify the chairman of the commission of such vacancy. The chairman shall call a meeting of the commission within twenty (20) days following such notice. The commission shall submit its nominations of three (3) candidates for each vacancy and certify them to the governor as promptly as possible, and in any event not later than seventy (70) days from the time such vacancy occurs. When it is known that a vacancy will occur at a definite future date, but the vacancy has not yet occurred, the clerk shall notify the commission immediately thereof, and the commission may, within sixty (60) days of such notice of such vacancy, make its nominations and submit to the governor the names of three (3) persons nominated for such forthcoming vacancy.  
*(Formerly: Acts 1971, P.L.427, SEC.5.) As amended by P.L.291-1985, SEC.14.*

#### **IC 33-2.1-4-7**

##### **Evaluating judicial candidates; investigations; public disclosure of names and information; public records**

Sec. 7. (a) The judicial nominating commission shall submit to the governor, from among all those names the commission considers for a vacancy, the names of only the three (3) most highly qualified candidates. In determining which candidates are most highly qualified each commission member shall evaluate each candidate, in writing, on the following considerations:

- (1) Legal education, including law schools attended and postlaw school education, and any academic honors and awards achieved.
- (2) Legal writings, including but not limited to legislative draftings, legal briefs, and contributions to legal journals and publications.

(3) Reputation in the practice of law, as evaluated by attorneys and judges with whom the candidate has had professional contact, and the type of legal practice, including experience and reputation as a trial lawyer or trial judge.

(4) Physical condition, including general health, stamina, vigor, and age.

(5) Financial interests, including any such interest which might conflict with the performance of judicial responsibilities.

(6) Activities in public service, including writings and speeches concerning public affairs and contemporary problems, and efforts and achievements in improving the administration of justice.

(7) Any other pertinent information which the commission feels is important in selecting the most highly qualified individuals for judicial office.

(b) The commission shall not make an investigation to determine these considerations until the individual states in writing that the individual desires to hold a judicial office that has been or will be created by a vacancy and that the individual consents to the public disclosure of information under subsections (d) and (g).

(c) The commission shall inquire into the personal and legal backgrounds of each candidate by investigations made independent from the statements on an application of the candidate or in an interview with the candidate. In completing these investigations the commission, in its discretion, may use information provided by or the assistance of:

(1) a law enforcement agency;

(2) any organization of lawyers, judges, or individual practitioners; or

(3) any other person or association.

(d) The commission shall publicly disclose the names of all candidates who have filed for judicial appointment after the commission has received the consent required by subsection (b) but before the commission has begun to evaluate any of the candidates. If the commission's screening of the candidates for judicial appointment occurs in an executive session conducted under IC 5-14-1.5-6.1(b)(10), the screening may not reduce the number of candidates for further consideration to fewer than ten (10) individuals unless there are fewer than ten (10) individuals from which to choose before the screening. When the commission's screening has reduced the number of candidates for further consideration to not less than ten (10) or it has less than ten (10) eligible candidates otherwise from which to choose, the commission shall:

(1) publicly disclose the names of those individuals and their applications before taking any further action; and

(2) give notice of any further action in the same manner that notice is given under IC 5-14-1.5.

(e) Information described in subsection (d)(1) is identifying information for the purposes of IC 5-14-1.5-6.1(b)(10).

(f) The commission shall submit with the list of three (3) nominees to the governor their written evaluation of each such nominee, based on those considerations stated in subsection (a). The list of names

submitted to the governor and the written evaluation of each nominee shall be publicly disclosed by the commission.

(g) Notwithstanding IC 5-14-3-4, all public records (as defined in IC 5-14-3-2) of the judicial nominating commission are subject to IC 5-14-3-3, including records described in IC 5-14-3-4(b)(12). However, the following records are excepted from public inspection and copying at the discretion of the judicial nominating commission:

(1) Personnel files of commission employees and files of applicants for employment with the commission to the extent permitted under IC 5-14-3-4(b)(8).

(2) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1, unless the records are prepared for use in the consideration of a candidate for judicial appointment.

(3) Investigatory records prepared for the commission under subsection (c) until:

(A) the records are filed or introduced into evidence in connection with the consideration of a candidate;

(B) the records are publicly discussed by the commission in connection with the consideration of a candidate;

(C) a candidate elects to have the records released by the commission; or

(D) the commission elects to release the records that the commission considers appropriate in response to publicly disseminated statements relating to the activities or actions of the commission;

whichever occurs first.

(4) Applications of candidates for judicial appointment who are not among the applicants eligible for further consideration following the commission's screening under subsection (d).

(5) The work product of an attorney (as defined by IC 5-14-3-2) representing the commission.

(h) When an event described by subsection (g)(3) occurs, the investigatory record becomes available for public inspection and copying under IC 5-14-3-3.

(i) As used in this subsection, "attributable communication" refers to a communication containing the sender's name, address, and telephone number. The commission shall provide a copy of all attributable communications regarding a candidate for judicial appointment to each member of the commission. An attributable communication becomes available for public inspection and copying under IC 5-14-3-3 after a copy has been provided to each member of the commission. The commission may not consider a communication other than an attributable communication in evaluating any candidate for judicial appointment.

(j) The commission shall release the investigatory records prepared for the commission under subsection (c) to the candidate for judicial appointment described by the records.

*(Formerly: Acts 1971, P.L.427, SEC.5.) As amended by P.L.291-1985, SEC.15; P.L.184-1986, SEC.5; P.L.281-1989, SEC.1; P.L.1-1991, SEC.181; P.L.37-2000, SEC.4.*

#### **IC 33-2.1-4-8**

##### **Meetings**

Sec. 8. (a) The judicial nominating commission shall meet from time to time as may be necessary to discharge its responsibilities under the Constitution of the State of Indiana and the laws of the state. Meetings of the commission shall be called by its chairman, or in the event of the chairman's failure to call a meeting when a meeting may be necessary, upon the call of any four (4) members of the commission. Whenever a meeting is called, the chairman shall give each member of the commission at least five (5) days written notice by mail of the time and place of every meeting unless the commission at its previous meeting designated the time and place of its next meeting.

(b) Meetings of the commission are to be held at such a place in Indiana as the chairman of the commission may arrange.

(c) The commission shall act only at a meeting and may act only on the concurrence of a majority of its members attending a meeting. The commission may not vote to reduce the number of candidates for further consideration or to submit or not submit the list of nominees under subsection (e) during an executive session. Four (4) members constitute a quorum.

(d) The commission may adopt reasonable and proper rules for the conduct of its proceedings and the discharge of its duties. The rules must comply with this chapter and include procedures by which eligible candidates for a vacancy in the supreme court or court of appeals may submit their names to the commission. The rules are public records, and the meetings of the commission at which the rules are considered for initial adoption or amendment must be publicly announced and open to the public.

(e) Notwithstanding IC 5-14-1.5-2, the commission is a public agency for the purposes of IC 5-14-1.5. The commission may meet in executive session under IC 5-14-1.5-6.1 for the consideration of a candidate for judicial appointment if:

- (1) notice of the executive session is given in the manner prescribed by IC 5-14-1.5-5;
- (2) all interviews of candidates are conducted at meetings open to the public; and
- (3) copies of all attributable communications concerning the candidates (as defined in section 7 of this chapter) have been provided to all commission members and made available for public inspection and copying.

*(Formerly: Acts 1971, P.L.427, SEC.5.) As amended by P.L.184-1986, SEC.6; P.L.281-1989, SEC.2; P.L.1-1991, SEC.182.*

#### **IC 33-2.1-4-9**

##### **Withdrawal of candidates; multiple vacancies**

Sec. 9. Withdrawal of Candidate and Multiple Vacancies. If any nominee dies or requests in writing that his name be withdrawn, the Commission shall nominate another person to replace him from the list of nominees previously provided. Whenever there are existing at the same time two (2) or more vacancies, the Commission shall nominate and submit to the Governor a list of three (3) different persons for each

of such vacancies.  
(Formerly: Acts 1971, P.L.427, SEC.5.)

#### **IC 33-2.1-4-10**

##### **Failure of governor to appoint; appointment by chief justice; changes in list**

Sec. 10. In the event of the failure of the Governor to make an appointment within the sixty (60) days from the date the names of the nominees are submitted to him, the Chief Justice of the State shall make the appointment from such nominees.

Any change in a list submitted to the Governor pursuant to section 9 of this chapter shall require a re-submission of the altered list to the Governor and the sixty (60) day period in which the Governor must make the appointment shall begin on the date of re-submission.

(Formerly: Acts 1971, P.L.427, SEC.5.) As amended by Acts 1981, P.L.272, SEC.8.

#### **IC 33-2.1-4-11**

##### **Effective date of appointment**

Sec. 11. An individual appointed to the supreme court, the court of appeals, or the tax court by the governor shall commence the duties of his office immediately upon the effective date of his appointment. No appointment to a judicial office shall become effective until a vacancy for such office exists.

(Formerly: Acts 1971, P.L.427, SEC.5.) As amended by P.L.291-1985, SEC.16.

#### **IC 33-2.1-4-12**

##### **Personnel**

Sec. 12. (a) The judicial nominating commission shall have the authority to employ investigators, and such experts as the commission in its discretion determines to be necessary to carry out its functions and purposes. The commission may employ special counsel in any proceedings if determined by the commission to be advisable.

(b) The division of state court administration shall serve the judicial nominating commission in performing its statutory and constitutional functions.

(c) The general assembly may appropriate such sums as it deems necessary for the expenses which may be incurred in the administration of this article.

(Formerly: Acts 1971, P.L.427, SEC.5.) As amended by Acts 1976, P.L.130, SEC.1; P.L.300-1987, SEC.1.

#### **IC 33-2.1-4-13**

##### **Staff duties**

Sec. 13. Staff Duties. (a) The staff of the Judicial Nominating Commission shall make such findings of fact concerning those individuals eligible to fulfill a vacancy in a judicial office as the Commission directs.

(b) The staff shall compile biographical sketches of each nominee



running for election to the Judicial Nominating Commission. Such information shall be submitted to the Clerk of the Supreme Court for mailing with the ballots, to qualified electors. These biographical sketches shall include:

- (1) Name and address;
- (2) Legal background, including:
  - (A) type of practice;
  - (B) law firm;
  - (C) law school-year of graduation, honors, other pertinent information;
- (3) General educational background;
- (4) A short statement by the nominee stating his efforts and achievements in bringing about improvement and betterment of the administration of justice;
- (5) Public Offices or positions:
  - (A) all public salaried positions;
  - (B) all services contributed to a public or charitable organization;
- (6) Business and civic affairs;
- (7) Any other pertinent information that the Commission deems important.

(c) The staff shall carry out any other duties assigned to it by the General Assembly and by the Judicial Nominating Commission when acting in that capacity and in its capacity as the Commission on Judicial Qualifications.

*(Formerly: Acts 1971, P.L.427, SEC.5.)*

#### **IC 33-2.1-4-14**

##### **Compensation**

Sec. 14. Compensation. Each member of the Judicial Nominating Commission shall serve without compensation for his services, except for per diem and travel expenses and other necessary and reasonable expenses.

*(Formerly: Acts 1971, P.L.427, SEC.5.)*

#### **IC 33-2.1-4-15**

##### **Commissioners, employees, and staff; immunity from civil liability**

Sec. 15. The commissioners, employees, and staff of the judicial nominating commission are immune from civil liability for any act or proceeding taken, or communication or statement made, relevant to the evaluation of a candidate under section 7 of this chapter.

*As added by P.L.281-1989, SEC.3.*

#### **IC 33-2.1-4-16**

##### **Agencies, organizations, other associations, or persons**

Sec. 16. An agency, organization, person, or association described in section 7(c) of this chapter is immune from civil liability for providing information or assistance in an investigation under section 7 of this chapter or for testifying before the judicial nominating commission if:

- (1) the information or testimony is relevant to the evaluation of a

- candidate under section 7(a) of this chapter; and
- (2) the information or testimony is:
- (A) an expression of opinion; or
  - (B) a statement of fact made without:
    - (i) knowledge that the statement is false; or
    - (ii) reckless disregard for the truth.

*As added by P.L.281-1989, SEC.4.*

### **IC 33-2.1-4-17**

#### **Senior judge; application; certification; retirement benefits**

Sec. 17. (a) A person who desires to serve as a senior judge under IC 33-4-8 may apply to the judicial nominating commission for certification as a senior judge to the supreme court.

(b) The judicial nominating commission shall certify to the supreme court a person desiring to serve as a senior judge if the person meets requirements for service as a senior judge set by the supreme court under IC 33-2-1-8.

(c) Except as provided in subsection (d), a person may not be certified under this section if:

- (1) the person:
  - (A) has not served as a judge or justice; or
  - (B) is still serving as a judge or justice;  
of a court of record in Indiana;
- (2) the person is not available for the minimum period of commitment for service as a senior judge specified by the supreme court in IC 33-2-1-8; or
- (3) the combination of:
  - (A) the compensation for senior judges set under IC 33-4-8-5;  
and
  - (B) any retirement benefits that the person is receiving or is entitled to receive;  
exceeds the minimum compensation to which judges of the circuit court are entitled under IC 33-13-12.

(d) A person who elects to forgo retirement benefits during the period of commitment as a senior judge may be certified as a senior judge under subsection (b) upon verification by the judicial nominating commission of the availability to the person of such an election.

*As added by P.L.334-1989(ss), SEC.5. Amended by P.L.1-1990, SEC.315.*